

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:07-cr-209-01

v.

HONORABLE PAUL L. MALONEY

DWIGHT JEROME LATHAM

Defendant.

_____ /

MEMORANDUM OPINION AND ORDER

Defendant Dwight Jerome Latham has filed a motion for modification or reduction of sentence pursuant to 18 U.S.C. §3582(c)(2) based on the modification of the Drug Quantity Table with respect to cocaine base (crack cocaine).

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 750 of the United States Sentencing Guidelines modified U.S.S.G. § 2D1.1, the Drug Quantity Table with regard to cocaine base (crack cocaine), and U.S.S.G. § 2D2.1(b). These modifications were made retroactive effective November 1, 2011. U.S.S.G. § 1B1.10(c).

The defendant was sentenced to the mandatory minimum of Life imprisonment upon his conviction, after trial by jury, of conspiracy to distribute and to possess with intent to distribute 50 grams or more of cocaine base and an unspecified quantity of marijuana. Upon review of the sentence modification report of the United States Probation Office and consideration of the

response to the report filed by the defendant, the Court determines the defendant is not eligible for a sentence reduction because his sentence was based on the statutory mandatory minimum. Absent an appropriate motion filed by the Government, the Court has no authority to reduce a sentence below the mandatory minimum. Therefore, the amendments are of no assistance to the defendant. To the extent the defendant argues, in his objection to the sentence modification report, for resentencing under *United States v. Blewett*, ___ F.3d ___, Nos. 12-5226, 12-5582 (6th Cir. May 17, 2013), the Court does not consider the request properly before the Court. The Court will dismiss without prejudice the request for resentencing under *Blewett* subject to the defendant filing a proper motion for such relief. Accordingly,

IT IS HEREBY ORDERED that Defendant Dwight Jerome Latham's motion for modification of sentence pursuant to 18 U.S.C. § 3582(c)(2) (ECF No. 116) is **DENIED**.

IT IS FURTHER ORDERED that the request for resentencing pursuant to *United States v. Blewett*, is **DISMISSED WITHOUT PREJUDICE** subject to the defendant filing a proper motion for such relief.

IT IS FURTHER ORDERED that Defendant's request for appointment of counsel is **DENIED**.

Date: July 2, 2013

/s/ Paul L. Maloney
Paul L. Maloney
Chief United States District Judge